IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 21 of 2001

in

SPECIAL CIVIL APPLICATION No 11300 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMAD HANIF GULAM MUSTAFA HAFEZI

Versus

DIST MAGISTRATE

Appearance:

MR HR PRAJAPATI for Appellant

MR UA TRIVEDI, AGP for Respondent Nos. 1, 2 and 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. This appeal under Clause 15 of the Letters Patent is directed against the judgment of the learned Single Judge dismissing the petition (Special Civil Application No.11300 of 2000) challenging the detention of the appellant under the provisions of Sections 3 and 5 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980.

2. It appears from the grounds of detention which were supplied to the appellant that the substance of the allegation against the appellant was that he was engaged in the illegal and unauthorised activity of buying and selling Blue Kerosene which was meant for the public distribution system in contravention of the provisions of the relevant control orders issued under the Essential Commodities Act and in contravention of Section 3 of the said Act. The details of the activity were set out in the grounds which were detailed and elaborate.

3. It was contended before the learned Single Judge that:

(i) Legible copies of the documents at page nos. 183, 185, 187, 239, 261, 285, 383, 415 to 454 and 467 was not supplied to the petitioner.

(ii) Translation either in Gujarati or Hindi of certain documents was not supplied to the petitioner.

(iii) There was considerable delay made by the Union of India in deciding the representation of the petitioner filed by him against the impugned order.

(iv) The State Government failed to forward the report of the approved order and the grounds of detention forthwith to the Union of India.

(v) The detaining authority has not considered the lesser drastic remedy available under Section 437 of CrPC.

4. The learned Single Judge has negatived all the

five contentions.

5. At the hearing before us, the learned counsel for the appellant has pressed only two contentions. Firstly, it was contended that the petitioner did not know English and failure to supply translated copies of the documents which were in English violated the appellant's fundamental right of being communicated the grounds of detention and making an effective representation against the order of detention. This plea was raised in ground 'V' in the original petition. It was stated in the said ground that the petitioner knows only Gujarati and Hindi and does not know English language, but certain documents were furnished to the petitioner in that language meaning thereby that the documents are not furnished and by that the petitioner's right of making effective defence was violated. In reply to the said plea, the detaining authority had stated in para 27 of the affidavit-in-reply that all the documents which have been furnished to the detenu are in Gujarati and the documents which were in English were translated into Gujarati and were furnished to the jail authorities. However, the learned Single Judge observed that the learned counsel for the petitioner fairly submitted that he did not know what qualifications the detenu had acquired. The learned Single Judge further observed that before such a contention is raised by a person who has been ordered to be detained for his activities which are prejudicial to maintenance of supply of essential commodities, he has to come up with all such fairness before the court and before he raises such a contention, it is expected from the petitioner first to disclose to the court what qualification he possesses. That has not been done. He also observed that the translated copies of the documents had been admittedly furnished to the petitioner after representation and only on that ground, the detention order could not be quashed.

6. In appeal, the brother of the detenu has filed a further affidavit stating that the detenu had studied up to 12th standard which he could not clear even after a number of attempts. He said that the detenu could only sign in English but could not read, write and understand English language. Alongwith the affidavit, mark-sheets of the detenu's result in 12th standard were also annexed. In reply, the detaining authority has stated in para 3 that the documents which were in English, as claimed by the detenu, pertain to bills/delivery challans sent by the party from whom the detenu purchased free sale kerosene as claimed by him and looking to these documents it is clear that the appellant who is having

working knowledge of English could very well understand it and is only feigning ignorance of knowledge of English. However, the appellant was furnished the translation of the English documents as per his demand in the representation. It was further submitted that the appellant has admitted in his statement that he placed orders with parties who have supplied him free sale kerosene as claimed by him and the bills and challans contain the very same quota for which the appellant placed order. It appears that the petitioner has signed even his V.P. in English. The learned counsel for the appellant submitted that the mere fact that the petitioner signed his V.P. in English does not mean that he knows English language. However, on going through the documents which were supplied to the petitioner alongwith the grounds of detention, we find that the petitioner has signed in English the dealership agreement which was in English and the signature thereon perfectly tallies with the signature on the V.P. In the circumstances of the case, we are satisfied that the petitioner has sufficient working knowledge of English to carry on his business and is merely feigning ignorance of English. Hence, there is no merit in this contention.

7. The second contention was that legible copies of certain documents were not supplied to the petitioner. The learned Single Judge observed that he had gone through the documents in question but, according to him, all the documents were legible and the grievance made on behalf of the petitioner was wholly untenable and unjustified. Before the learned Single Judge, specific reference was made to the document at page 261. The learned Single Judge observed that this document is legible in toto except that in column "PARTICULARS" there appears to be a rubber seal which may not be 100% legible but the substance of the matter has to be considered and if we go by that only on the ground that this rubber seal may not be fully legible, the detention order cannot be quashed and set aside. He further observed that the learned counsel for the petitioner has failed to show what was the relevancy of the rubber seal in the matter.

8. We also went through the documents in question and we are in agreement with the learned Single Judge that the copies of the documents which were supplied to the detenu were legible. We are in complete agreement with the view expressed by the learned Single Judge on this point. Hence, there is no merit in this contention too.

9. No other contention was raised before us.

10. The result is that the appeal fails and is dismissed.

(R.K. Abichandani, J.)

(M.C. Patel, J.)

hki